

REMARKS/ARGUMENTS

The Office has required restriction of Claims 1-54 into the following Groups:

Group I (Claims 27-29, 35, 39, 43, 44 and 48), drawn to a polypeptide molecule,

Group II (Claims 30, 36, 40 and 45), drawn to a polypeptide molecule,

Group III (Claims 31, 37, 41 and 46), drawn to a polypeptide molecule,

Group IV (Claims 32, 38, 42 and 47), drawn to a polypeptide molecule,

Group V (Claims 33-34), drawn to a method of in vitro diagnosis of malaria,

Group VI (Claim 49-52), drawn to a recombinant vector, and

Group VII (Claims 53-54), drawn to a method of producing an immunogenic polypeptide.

Applicants elect, with traverse, the claims of Group I (Claims 27-29, 35, 39, 43, 44 and 48) for further prosecution in the above-identified application.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct. The burden of proof is on the Office to provide reasons and/or examples to support any conclusion with regard to patentable distinctness (M.P.E.P. § 803).

In the Restriction Requirement the Office has alleged that the inventions of Groups I, II, III, IV and VI are unrelated. Citing to MPEP § 806.04 and § 808.01 the Office has noted that inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects. The Office has alleged that the inventions of the Groups noted above have different modes of operation and functions, for example the inventions of Groups I-IV are polypeptides having different amino acid sequences and the invention of Group VI is a recombinant vector.

The Office has characterized the inventions of Groups I, II, III and IV, and VI as unrelated. The Office has concluded that the inventions have different modes of operation and functions. However, the Office has not provided sufficient reasons and/or examples to

support this assertion. The Office has merely stated that Groups I-IV are polypeptides and involve different amino acid sequences whereas Group VI is a recombinant vector.

Accordingly, the Office has failed to meet the burden necessary to sustain the Restriction Requirement. Applicants respectfully request withdrawal of the restriction requirement.

The Office further alleges that the subject matter of Groups I-IV, VI, V, and VII are related as product and process of use. The Office cited to MPEP § 806.05(h) and noted that inventions can be shown to be distinct if either or both of (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product.

The Office further asserted that the methods of Group V and VII can be performed by any of the inventions of Groups I-IV and VI while the inventions of Groups I-IV can be used to help produce vaccines and the vector of invention VI can be used as a probe. However, the Office has not cited to evidence of record to show that the claimed inventions can indeed be used as the Office has alleged. Further, the Office has failed to show that the alleged uses are materially different from what is claimed. Accordingly, Applicants respectfully request the withdrawal of the Restriction Requirement.

Further, the Office alleged that the subject matter of Groups V and VII are unrelated and cited to MPEP § 806.04 and § 808.01 and stated that inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects.

The Office has asserted that the inventions of the groups have different functions. However, the Office has not provided sufficient reasons and/or examples to support this assertion. The Office has merely stated the conclusion that the functions of the inventions are different. Accordingly, the Office has failed to meet the burden necessary in order to sustain the restriction requirement.

Applicants respectfully submit that the restriction requirement should be withdrawn.

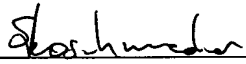
Respectfully submitted,

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